

12-3830-cv (L)

First Advantage Litig. Consulting, LLC v. Am. Int'l Specialty Lines Ins. Co.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of May, two thousand thirteen.

PRESENT: DENNY CHIN,
RAYMOND J. LOHIER, JR.,
Circuit Judges,
JOHN F. KEENAN,
District Judge.*

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FIRST ADVANTAGE LITIGATION CONSULTING, LLC,
Plaintiff-Counter
Defendant-Appellant,

-v-

12-3830-cv,
12-3841-cv

AMERICAN INTERNATIONAL SPECIALTY LINES
INSURANCE COMPANY,

Defendant-Cross
Defendant-Appellee,

FEDERAL INSURANCE COMPANY,

Defendant-Cross Claimant-
Cross Defendant-Appellee,

* The Honorable John F. Keenan, of the United States District Court for the Southern District of New York, sitting by designation.

pursuant to its memorandum and order entered August 21, 2012, denying summary judgment for First Advantage and granting summary judgment in favor of the insurers. The principal issue was whether any of the insurers -- defendant-cross defendant-appellee American International Specialty Lines Insurance Company ("AISLIC"), defendant-cross claimant-cross defendant-appellee Federal Insurance Company ("Federal"), and defendant-cross defendant-cross claimant-counter claimant-appellee Zurich American Insurance Company ("Zurich") -- was obligated to defend and indemnify First Advantage in connection with a defamation suit brought against it in New Jersey state court.¹ We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review de novo a district court's grant of summary judgment, Gorzynski v. JetBlue Airways Corp., 596 F.3d 93, 101 (2d Cir. 2010), as well as its interpretation of contracts, including insurance agreements, Ment Bros. Iron Works Co. v. Interstate Fire & Cas. Co., 702 F.3d 118, 121 (2d Cir. 2012). After an independent review of the record, we conclude that AISLIC, Federal, and Zurich were entitled to summary judgment for substantially the reasons set forth by the district court in its thorough memorandum and order. We add only the following.

¹ The district court's ruling as to defendant-cross defendant Tudor Insurance Company is not the subject of this appeal.

First, as First Advantage conceded at oral argument, all of the statements found to be defamatory by the jury were first published, in form or substance, on October 23, 2002, prior to the April 30, 2003 retroactive date of the AISLIC policy and the 2005-2006 policy period of the Zurich policy. Hence, the statements fell within the policies' prior acts exclusion and prior publication exclusion, respectively.

Second, the insurers do not have a continuing duty to defend First Advantage through the appeal in the defamation action. The district court correctly concluded as a matter of law that, given the verdict in the defamation action, there is no basis on which the insurers will be obligated to indemnify First Advantage, thereby relieving the insurers of the duty to defend as of the date of the district court's ruling. See Hugo Boss Fashions, Inc. v. Fed. Ins. Co., 252 F.3d 608, 622 (2d Cir. 2001) (under New York law, insurer's duty to defend ends as of date of court's declaratory judgment); Buss v. Superior Court, 16 Cal. 4th 35, 56 n.18 (1997) (collecting cases that, under California law, provide insurer's duty to defend ends as of date of court judgment). We need not, and do not, address the effect of this ruling on the insurers' duty to defend if the defamation action is remanded for a new trial.

We have considered all of First Advantage's remaining arguments and conclude they are without merit. Accordingly, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal has a red outer ring with the words "UNITED STATES" at the top and "COURT OF APPEALS" at the bottom. Inside the ring, the words "SECOND CIRCUIT" are written in the center, flanked by two small stars on either side.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

This block contains a second instance of the handwritten signature "Catherine O'Hagan Wolfe" written over the same circular court seal as seen in the previous block. The seal is the official seal of the United States Court of Appeals, Second Circuit.